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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its seventieth session, 25 to 29 August 2014****No.35/2014 (Egypt)****Communication addressed to the Government on 18 June 2014**

**Concerning Mr. Khaled Mohamed Hamza Abbas, Mr. Adel Mostafa Hamdan Qatamish, Mr. Ali Ezzedin Thabit, Mr. Zain El Abidine Mahmoud and Mr. Tariq Ismail Ahmed.**

**The Government has not replied to the communication**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

- (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);
- (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
- (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

## Submissions

### *Communication from the source*

3. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. Mr. Khaled Mohamed Hamza Abbas is an Egyptian national born in 1963. He is an engineer, journalist and human rights activist. He is a leading member of Muslim Brotherhood in Egypt, who established and maintains the English version of Muslim Brotherhood's website.

5. Mr. Adel Mostafa Hamdan Qatamish is a 53-year-old Egyptian national. He is the former Deputy Governor of Northern Sinai and an active member of Muslim Brotherhood.

6. Mr. Ali Ezzedin Thabit is a 45-year-old Egyptian national. He is a professor in ophthalmology at the University of Asyut and an active member of Muslim Brotherhood.

7. Mr. Zain El Abidine Mahmoud is a 40-year-old Egyptian national. He is a professor and an active member of Muslim Brotherhood.

8. Mr. Tariq Ismail Ahmed is a 42-year-old Egyptian national. He is a mechanical engineer and an active member of Muslim Brotherhood.

9. On 25 February 2014, these five individuals were arrested at the Sudanese border, near Wadi Al-Allaqi, by border guards while travelling by car with two Sudanese nationals. They were charged with the following offences:

(a) Possessing 685 9 mm. ammunitions without authorisation, with intention to use them against the State security and the general interest as well as against the Constitution and the social and national unity of the State;

(b) Entering a military zone, located in in Abu Mera (130 kilometers south-west of Aswan), pursuant to Presidential Decree No. 204-2010 and article 5 of the Code of Military Justice.

10. The source informs the Working Group that these charges are fabricated and there is no evidence to prove the alleged charges. Their trial began on 17 March 2014 and it is unclear whether or not they were represented by a lawyer. On 7 May 2014, the Military Supreme Court of Qena convicted them and sentenced them to one year of imprisonment. They remain detained in Qena prison to date.

11. The source submits that the detention of these five individuals is arbitrary, as they were arrested and indirectly sentenced for their political activism as supporters of the Muslim Brotherhood. It points out that all of the five individuals have been active members of Muslim Brotherhood and were referred to as such when they were arrested. Consequently, the source believes that they have been arrested and detained because of the exercise of their right to freedom of expression, which is guaranteed by article 19 of the International Covenant on Civil and Political Rights (ICCPR).

12. Furthermore, the source argues that the trial of civilians in military courts is per se a gross violation of the right to a fair trial, guaranteed under article 14 of the ICCPR, as the structure and proceedings of military courts are such that they are unable to guarantee a fair trial in accordance with the international norms and standards. Thus, in the source's view, any form of imprisonment of civilians which is an outcome of a trial in a military court amounts to arbitrary detention.

*Response from the Government*

13. The Working Group addressed a communication to the Government of Egypt on 18 June 2014 requesting detailed information about the current situation of Mr. Khaled Mohamed Hamza Abbas, Mr. Adel Mostafa Qatamish, Mr. Ali Ezzedin Thabit, Mr. Zain El Abidine Mahmoud, and Mr. Tariq Ismail Ahmed, and the legal provisions justifying their continued detention and their compliance with international law. The Working Group regrets that the Government has not responded to the allegations transmitted to it.

**Discussion**

14. Despite the absence of any information from the Government, the Working Group considers that it is in the position to render its Opinion on the detention of the five individuals in conformity with paragraph 16 of its Methods of Work.<sup>1</sup>

15. The source has informed the Working Group that the charges against the five individuals are fabricated and without evidence, and that it is unclear whether or not they were represented by a lawyer. These allegations have not been refuted by the Government.

16. The source has also indicated that they were arrested for their support of the Muslim Brotherhood. The source further points out that their trials before military courts are in violation of international law. The Government has chosen not to rebut these allegations.

17. The source has not provided much in terms of precise information about the criminal proceedings upon which the Working Group can base its opinion in the absence of a reply from the Government. The source has, however, informed the Working Group that the trial took place before a military court, and the Working Group has in several opinions considered the trial of civilians before Egyptian military tribunals. The Working Group underlines that the trial of civilians or decisions placing civilians in preventive detention by military courts are in breach of the fundamental requirements of independence and impartiality and of guarantees for a fair trial required by article 10 of the UDHR, article 14 of the ICCPR and customary international law as confirmed by the constant jurisprudence of the Working Group<sup>2</sup>

18. The Working Group considers that the breaches of articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR are of such gravity as to give the deprivation of liberty of the five individuals an arbitrary character. Their deprivation of liberty falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

<sup>1</sup> See for instance Opinion No. 5/2014 (Iraq) with references in [15]-[16] 'Evidence'.

<sup>2</sup> See the Report of the Working Group on Arbitrary Detention to the UN Human Rights Council (2014), A/HRC/27/48 [66], and the following Working Group opinions: No. 20/2012 (Israel); No. 11/2012 (Egypt); No. 12/2012 (Egypt); No. 6/2012 (Bahrain); No. 3/2012 (Israel); No. 1/2012 (Egypt); No. 57/2011 (Egypt); No. 50/2011 (Egypt); No. 37/2011 (Syrian Arab Republic); No. 38/2011 (Syrian Arab Republic); No. 39/2011 (Syrian Arab Republic); No. 1/2011 (Syrian Arab Republic); No. 3/2011 (Egypt); No. 31/2010 (Bolivarian Republic of Venezuela); No. 32/2010 (Peru); No. 27/2010 (Syrian Arab Republic); No. 22/2010 (Egypt); No. 23/2010 (Myanmar); No. 13/2010 (Palestinian Authority); No. 9/2010 (Israel); No. 5/2010 (Israel).

19. The Working Group recalls that this is only one of several opinions from the Working Group finding Egypt in violation of its international human rights obligations. The Working Group reminds Egypt of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations. The Working Group also underlines the individual criminal responsibility that can follow from arbitrary detention when it may constitute crimes against humanity under customary international law.

**Disposition**

20. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The detention of Mr. Khaled Mohamed Hamza Abbas, Mr. Adel Mostafa Qatamish, Mr. Ali Ezzedin Thabit, Mr. Zain El Abidine Mahmoud and Mr. Tariq Ismail Ahmed is in breach of articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

21. Consequent upon the opinion rendered, the Working Group requests the Government of Egypt to remedy the situation of Mr. Khaled Mohamed Hamza Abbas, Mr. Adel Mostafa Qatamish, Mr. Ali Ezzedin Thabit, Mr. Zain El Abidine Mahmoud and Mr. Tariq Ismail Ahmed, and to bring it into conformity with the UDHR, the ICCPR and customary international law.

22. Taking into account all the circumstances of the case, the Working Group concludes that the adequate remedy would be to release Mr. Khaled Mohamed Hamza Abbas, Mr. Adel Mostafa Qatamish, Mr. Ali Ezzedin Thabit, Mr. Zain El Abidine Mahmoud and Mr. Tariq Ismail Ahmed immediately and to accord them an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR and customary international law. The duty to provide them compensation for the violations of their rights rests upon the State and must be enforceable before the national courts.

[Adopted on 28 August 2014]